

# **EXHIBIT A**

## **PART 6**

1 to have inadvertently activated the foot pedal  
2 as your opinion assumes if her foot was  
3 12 inches away from the foot control at resting  
4 position, all the way down to 1 inch away from  
5 the foot control, is there any difference?

6 A. It has no -- that actually has no  
7 meaning. The -- it has to do with, you  
8 know, when she leans forward, you know, the --  
9 is she able to reach the press and, you know, if  
10 she is in a home base where she could have  
11 reached the pedal comfortably to begin with,  
12 that's all that counts. I don't care whether it  
13 is comfortable, you are 2 inches away or  
14 12 inches away, as long as you have -- you are  
15 in a position where you can activate the unit  
16 and still put your hands into the press.  
17 Whatever is done advertently can be done  
18 inadvertently.

19 Q. Let's assume that she was in the  
20 sitting position before this incident occurred,  
21 how far would she have to lean her torso forward  
22 for her foot to begin moving in this  
23 involuntary --

24 A. The instant you start to move forward

1 your foot could move. The instant you go from a  
2 relaxed position and I am going to reach  
3 forward, one of the natural things you do when  
4 you reach forward is step forward to be prepared  
5 to stabilize yourself so you don't fall on your  
6 face.

7 Q. From the seating -- seating position?

8 A. Right, I mean that's one of the things  
9 that you do.

10 Q. What are you relying upon in forming  
11 that opinion, that your foot --

12 A. It is the definition of ambulation.

13 Q. Here I am moving my forward torso, my  
14 foot is not moving, and I am moving it the  
15 entire way --

16 A. Every time you move forward you just  
17 put pressure on your foot.

18 Q. Right.

19 A. And if you are worried that you are  
20 going to move so far forward that you have to  
21 stabilize yourself. Let's say you back your  
22 feet up and you have it resting on the chair and  
23 you move forward like that, I assure you your  
24 foot will come forward to make sure that you are

1 stable.

2 Q. Do you have any evidence that her foot  
3 was back behind on the chair?

4 A. I have no evidence of any of this.

5 Q. Okay, well, here I am --

6 A. Yes.

7 Q. -- correct me if I am wrong, I am  
8 seated in my chair, my feet are flat; are they  
9 not?

10 A. Yes.

11 Q. And I am leaning all the way down to  
12 my -- such that my chest hits my knees --

13 A. Right.

14 Q. -- and my foot hasn't moved; right?

15 A. Your foot hasn't moved and you put  
16 pressure on your feet when you have done that.

17 Q. Okay. So what is it about her  
18 situation that caused her -- and if I lean  
19 forward as far as I can, my foot hasn't moved;  
20 is that right?

21 A. That's right, and you put more pressure  
22 on your foot.

23 Q. Okay. So what is it about her  
24 situation that leads you to conclude that her

1 foot is actually moved the distance whatever it  
2 is away from the foot --

3 A. That her foot is not in a stable  
4 position in front of her like yours are, they  
5 are back.

6 Q. Okay, this is what I wanted to hear.

7 So you are -- are you saying that it was  
8 dangling?

9 A. Not necessarily dangling. Her foot  
10 could be moved back in a position where you  
11 can't stabilize yourself if you move forward.  
12 You have pulled it out of the unit, and you are  
13 now less stable in the moving forward position  
14 because you are out of the unit, and now when  
15 you lean forward, it is necessary to step  
16 forward to stabilize yourself.

17 Q. Has she ever indicated that she was  
18 unstable?

19 A. I never -- remember once again I didn't  
20 interview her.

21 Q. Isn't that significant?

22 A. What's significant?

23 Q. Whether or not she was unstable when  
24 she leaned her torso forward if she was in a

1 seating position because as we have just shown,  
2 I'm -- my feet are stable, my foot is not  
3 moving. Are you saying if her foot was behind  
4 her, you are saying it would move forward. Now,  
5 I can tell you I am doing the same thing with my  
6 foot behind me like you are saying and my foot  
7 is still not moving.

8 A. Oh, no, no, no, no, you are not putting  
9 your foot behind you or you would be on your  
10 face.

11 Q. Where -- how far behind you is your  
12 foot --

13 A. Put --

14 Q. -- needing to be?

15 A. -- your feet back, way back.

16 Q. Here it is, all the way back.

17 A. Right, take your other foot and put it  
18 back.

19 Q. Both of them?

20 A. Right.

21 Q. Okay, okay --

22 A. Now try to lean forward.

23 Q. Okay. So you need to have both feet  
24 back before this scenario occurs?

1 A. Right.

2 Q. Okay, I want to make sure I understand  
3 what your scenario is assuming.

4 A. Now, all I am --

5 MR. HARTMAN: I am going to object to the  
6 form of the question because the scenario is  
7 assuming based on your sitting there digging  
8 your toes into the floor as you are doing this.

9 There is no indication that he has  
10 indicated that he is assuming these for the  
11 scenario except for the basic principle of  
12 ambulation is applied to any situation.

13 MR. ROBINSON: I don't understand it but  
14 okay.

15 MR. HARTMAN: Well --

16 THE WITNESS: Well, if you are standing  
17 straight up, you cannot move unless you lean  
18 forward and start to fall, and then you need a  
19 foot to catch you when you fall. That's what  
20 ambulation is.

21 BY MR. ROBINSON:

22 Q. I am referring to a seating position  
23 right now. I am only referring to a seating  
24 position.

1           A. Well, I understand. And I have no  
2 evidence that she was seated. I only have  
3 evidence that she was either seated or leaning  
4 against the seat. That's the only thing I have  
5 seen in the file.

6           Q. Okay, let's talk about leaning against  
7 the seat. Have you done any type of study to  
8 see how far her torso would need to move or  
9 where her feet would need to be if she were  
10 leaning against the seat?

11          A. No, I haven't.

12          Q. Wouldn't it be important for you to  
13 know in coming to this assumption that her foot  
14 inadvertently moved whether she was seating --  
15 seated, leaning, or standing; wouldn't that be  
16 an important determination?

17          A. No, not important to me, it is not  
18 important to me. What is important to me is  
19 that she is in a position where she is able to  
20 activate the press.

21          Q. If your feet are -- if your feet are --  
22 I don't want to just use me. If your foot are  
23 flat in front of you --

24          A. Yes.

1 Q. -- and you lean forward, do your feet  
2 move all the time?

3 A. No.

4 Q. Do they move ever?

5 A. Sometimes.

6 Q. Would you -- can you show me.

7 A. I don't understand.

8 Q. I want to know what you are describing.

9 Put your feet flat on the floor --

10 A. Yes.

11 Q. -- and then lean forward.

12 A. If I lean forward enough, I am going to  
13 have to move my feet forward.

14 Q. Your foot hasn't moved --

15 A. Well, let me start further back --

16 THE COURT REPORTER: Pardon me, pardon me, I  
17 can't, I can't.

18 MR. ROBINSON: Okay.

19 MR. HARTMAN: Okay.

20 MR. ROBINSON: Hold on.

21 THE COURT REPORTER: I need to rest a  
22 minute. I really do.

23 MR. ROBINSON: Hold on. I understand. Go  
24 ahead.

1           THE COURT REPORTER: I just -- I can't get  
2       both of you. I am trying to get every single  
3       word --

4           MR. ROBINSON: I understand.

5           THE COURT REPORTER: -- and I can't get  
6       every word.

7           MR. HARTMAN: Okay, I understand.

8           THE WITNESS: We will slow down.

9           MR. HARTMAN: Okay, I want to interject  
10      something, Mr. Robinson is being extremely  
11      argumentative with this witness. I have let it  
12      go on for way too long. There is a basic  
13      principle that's been applied to the situation.

14           MR. ROBINSON: I object to your speaking  
15      comments again, Mr. Hartman.

16           MR. HARTMAN: Okay, you are entitled to it.  
17      At some point in time this has to end. He  
18      cannot become argumentative with the witness.  
19      He cannot give a -- sit there and use his body  
20      ambulations and configurations to try and  
21      distort a well known fact by anyone who knows  
22      anything about the subject matter about the  
23      theory of ambulation.

24

233

1 BY MR. ROBINSON:

2 Q. Sir, back to what we are talking about,  
3 I am talking -- I know you said if you put your  
4 feet behind you. I am talking about if you put  
5 your feet flat on the ground, are your feet  
6 moving when you lean your torso toward?

7 A. If I already have my feet in a stable  
8 position that would allow me to reach forward --

9 Q. Yes.

10 A. -- with my feet in that position --

11 Q. Yes.

12 A. -- then I don't have to move them  
13 forward anymore.

14 Q. So how far back do your feet need to be  
15 before they begin to move with the forward  
16 movement of the torso in a seated position?

17 A. You can't -- there is no way to answer  
18 the question. There is no way to answer that  
19 question.

20 Q. Aren't those significant --

21 A. You haven't given me the parameters to  
22 answer.

23 Q. Aren't those significant questions to  
24 know answers to when formulating an opinion as

1 to what Tina Lindquist did?

2 A. Absolutely not. I am not going to  
3 speculate on what she did. She is going to be a  
4 human being that you can ask all the questions  
5 you want.

6 The fact that you are not skillful  
7 enough to get the information when you took her  
8 deposition doesn't mean you are going to get it  
9 from me on the basis of speculation. I am not  
10 going to do that.

11 I will give you principles, but I am  
12 not going to speculate what she was doing. If I  
13 ask her the questions, then I would take  
14 responsibility for all these -- all the  
15 questions you are asking, but I haven't  
16 interviewed her.

17 Q. Aren't you speculating that her foot  
18 moved forward?

19 A. She said that she had her foot outside  
20 of the unit.

21 Q. I said aren't you speculating that her  
22 foot moved forward?

23 A. It is not speculation. That is a  
24 scientific fact. If she has her foot outside of

1       the unit and she has made the unit activate to  
2       hurt her hands, this is a one-note samba. It is  
3       not like there is 11 different things that can  
4       happen.

5                 She has to step into the switch far  
6       enough to push the pedal in, to push the lock  
7       plate in, push down on the unit in order to have  
8       a stroke that will hurt her so that we know this  
9       working backwards.

10          Q. Do you know that OSHA in investigating  
11       this accident indicated the foot control was  
12       properly guarded?

13          A. I don't know anything of the kind.

14          Q. Did you review the OSHA?

15          A. You are certainly not going to try to  
16       impress me with what OSHA knows about foot  
17       pedals. I hope you are not going to try --

18          Q. I am --

19          A. -- to do that.

20          Q. -- not sure what you mean by that.

21       What do you mean by that?

22          A. Well, first of all, I have had 19  
23       contracts with OSHA where I developed a training  
24       program that OSHA uses for their compliance

1 officers in different fields.

2 I am an authority. OSHA is not an  
3 authority. They don't do any research at OSHA.

4 All of the work that's done, the research that's  
5 done in safety is done in the Department of the  
6 Interior by the -- by NIOSH, not by OSHA. They  
7 don't do any testing. They copy the standards  
8 that Ralph Barnett and people like me make.

9 And since I am the one, for example,  
10 that ran the A14 committee, you know, as a  
11 technical secretariat on ladders, everything we  
12 do on ladders they copy word for word and put  
13 into OSHA. They don't do any original work on  
14 their own.

15 Q. You don't have much respect for OSHA it  
16 sounds like?

17 A. I have no respect for OSHA at all.  
18 What they do is they copy. They started in  
19 business by copying and plagiarizing every  
20 wonderful standard that we have in the  
21 United States and copied it down and said this  
22 is our regulation. They didn't do a scintilla  
23 of work of their own.

24 Now, that doesn't mean the work that

1 they get -- they get in this way is bad. They  
2 copied from the best. Just like the student in  
3 school that wants to sit in back of the best  
4 student, if he copies over his shoulder, he is  
5 liable to get an A in the class.

6 Q. Did they copy from you, is that what  
7 you are saying?

8           A. Of course they copied from me. That  
9 was their job.

10 MR. ROBINSON: Why don't we take a little  
11 break and we will look at the file of materials  
12 that have been brought.

13 THE VIDEOGRAPHER: Off the record at 4:37 p.m.

14 (Recess taken.)

15 THE VIDEOGRAPHER: Back on the record at  
16 4:45 p.m.

17 BY MR. ROBINSON:

18 Q. Was this Heim press brake intended to  
19 be used with the point of operations safety  
20 device, sir?

21 A. I think so.

22 Q. With regard to the gate, when did the  
23 gate come out?

24 A. The gate that I am talking about was I

1 think first introduced in '76 and then put into  
2 the catalogues in '77.

3 Q. Do you know if Heim ever received the  
4 catalogue before the sale of this particular  
5 press brake?

6 A. I don't know specifically what they  
7 received, but, you know, Linemaster had a  
8 campaign to send this notification about this  
9 switch to everybody. And Heim would have -- the  
10 best I could tell you Heim would have been a  
11 really good customer of Linemaster.

12 Q. And --

13 A. And that I know from my own. That's  
14 not speculation on my part. I know this.

15 Q. No, my question is simply do you have  
16 any information that Heim was aware of the  
17 existence of a gated foot control at the time it  
18 sold this one, this press brake in 1978?

19 A. I think they should have been because I  
20 am sure that they received the notice from  
21 Linemaster.

22 Q. Should have been is something we will  
23 get into it. Do you have any evidence that they  
24 actually knew?

1 A. I have no evidence.

2 Q. And when you say that they should have  
3 been, you are saying that because of the  
4 publication by Linemaster that Linemaster would  
5 have given that to Heim?

6 A. Right, and they also at the shows, you  
7 know, the -- if Heim went to any of the shows  
8 they would have seen it because they were  
9 displaying -- they were displaying this new  
10 device at their shows.

11 Q. Do you have any evidence that Heim was  
12 at a show where it has been displayed?

13 A. No, I don't.

14 Q. Have you ever talked with anyone from  
15 Linemaster to see if they provided Heim with  
16 notice of a gate --

17 A. No.

18 Q. -- a gated foot control?

19 A. I have not.

20 Q. Your entire file I believe has been  
21 brought down here. It is getting late in the  
22 day, ten to 5:00. I'd like an opportunity to  
23 view that file. I had suggested that it be left  
24 here for the evening since we are coming back

1 tomorrow. Do you have any issue with leaving it  
2 here, sir?

3 A. I have -- the only issue I have is its  
4 security. If you represent to me that nothing  
5 is going to happen to it, you know, the -- there  
6 is certainly nothing in there that I don't want  
7 you to see.

8 Q. Okay. Well, Mr. Hartman, you had heard  
9 him say that he wasn't going to leave it here --

10 A. He is not as trusting as I am. That's  
11 not his business to be trusting. Mine is.

12 Q. Well, I would appreciate that because I  
13 don't really have the opportunity right now  
14 to -- as you know we are going to ask  
15 Mr. Ulmenstein a few questions about some of the  
16 new materials you had produced and new  
17 notations. And I just don't want to have to  
18 take -- I was asked if I reviewed it. How large  
19 is the file? It is three Bankers Boxes; right?

20 A. Exactly.

21 Q. Right, so --

22 MR. HARTMAN: If he doesn't have an  
23 objection and you guarantee the security of it,  
24 I don't have an objection either.

1           MR. ROBINSON: Yeah, I'm not sure what that  
2 means. I am going to guarantee the security? I  
3 am not going to guarantee, guarantee from a fire  
4 loss or a tornado, I can't guarantee that.

5           THE WITNESS: No, I don't mean that. I mean  
6 I have had files where they picked up the file  
7 from the file room and filed it in the wrong  
8 place and every report disappeared, never to be  
9 found again, you know, \$35,000 for a report  
10 which we could never find again and could never  
11 get back into the plant to redo it. I mean  
12 that's the kind of stuff that worries me.

13          MR. HARTMAN: Okay.

14          MR. ROBINSON: And my plan would most likely  
15 be to come here very early tomorrow morning.

16          THE WITNESS: If the room is dedicated to  
17 your efforts, then that's probably going to be  
18 fine.

19          MR. HARTMAN: I have no objection.

20          MR. ROBINSON: Okay, great.

21           That's all the questions I have, sir.

22           Thank you very much.

23          THE WITNESS: Thank you.

24

1 EXAMINATION

2 BY MR. HARTMAN:

3 Q. I am sorry, I just have a couple. I  
4 normally wouldn't ask questions, but at one time  
5 and I think it is a mistake, but just clarify it  
6 for me, you indicated that the Heim machine was  
7 a 35 stroke per minute machine?

8 A. Yes.

9 Q. And then another time you indicated  
10 that it was a 35 stroke per second machine. I  
11 think it is a 35 stroke per minute?

12 A. It is per minute.

13 Q. Okay.

14 A. If it was per second, let me tell you  
15 something, it is -- they have a name for it. It  
16 is called a hummingbird.

17 Q. I just -- I just don't want it to come  
18 back that you --

19 A. Right.

20 Q. -- stated on the record --

21 A. Thank you.

22 Q. The other issue I have is with regard  
23 to -- I will grab my note, give me a second, I  
24 had it, you indicated that the -- is it ever

1 safe to have an unguarded foot pedal associated  
2 with the press brake?

3 MR. ROBINSON: Object to the form of the  
4 question.

5 THE WITNESS: On a general purpose machine  
6 it is never safe because the number of scenarios  
7 that you have when you have a tethered  
8 footswitch that could find itself anywhere on  
9 the floor, it means that the folks delivering  
10 the new parts to the machine to be processed,  
11 the folks that are picking up the finished  
12 parts, the people who are doing adjustments and  
13 lubrication of the machine, there is an army of  
14 people who walk in the area where the footswitch  
15 is located, any of these people can step  
16 inadvertently into this machine and produce a  
17 stroke and so, you know, the rule is to minimize  
18 the probability of accidental activation for the  
19 environment that the -- that these switches find  
20 themselves.

21 And the -- there is no such thing when  
22 you have a switch that is meant to be activated  
23 by a human being as making it so that you could  
24 never activate it because then you could never

1 run the machine.

2 So what we are trying to do is get  
3 controls such that they are sensitive to when we  
4 want them to work, they work. When we don't  
5 want them to activate, they don't.

6 And that is a real challenge for the  
7 technical community and, you know -- you know, I  
8 am very proud of the fact that some of the  
9 people who make footswitches have been improving  
10 their menu of potential devices so that  
11 machinery manufacturers can pick ones that come  
12 closer to this goal of minimizing accidental  
13 activation.

14 MR. HARTMAN: No further questions.

15 THE WITNESS: I do -- I think I have to add  
16 something to the thing. Remember I told you  
17 that I also have made a mistake in the report  
18 and you didn't ask me what that was. But if we  
19 would -- if you could give me the Triodyne  
20 report, it is one word.

21 MR. ROBINSON: The illustrated?

22 THE WITNESS: Yes. Did you see that in  
23 there?

24 MR. ROBINSON: I did. And that's why I

1 didn't ask about it, but I did see it. That's  
2 the actual original report, and I appreciate  
3 that, sir.

4 THE WITNESS: I just wanted to make sure you  
5 did see it.

6 MR. HARTMAN: Okay, we want to read. We are  
7 not waiving. Thank you.

8 THE WITNESS: Thank you.

9 THE VIDEOGRAPHER: Off the record at 4:52 p.m.

10 (Whereupon, Barnett Deposition  
11 Exhibit G and H were marked for  
12 identification.)

13 (FURTHER DEPONENT SAITH NAUGHT.)

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1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF DuPAGE )

4 I, Patricia L. Wangler, a notary public  
5 within and for the County of DuPage and State of  
6 Illinois, do hereby certify that heretofore,  
7 to-wit, on the 6th day of April, 2006,  
8 personally appeared before me, at  
9 33 North LaSalle Street, Illinois, RALPH L.  
10 BARNETT, in a cause now pending and undetermined  
11 in the United States District Court, wherein  
12 TINA LINDQUIST is the Plaintiff, and HEIM, L.P.,  
13 is the Defendant.

14 I further certify that the said witness  
15 was first duly sworn to testify the truth, the  
16 whole truth and nothing but the truth in the  
17 cause aforesaid; that the testimony then given  
18 by said witness was reported stenographically by  
19 me in the presence of the said witness, and  
20 afterwards reduced to typewriting by  
21 Computer-Aided Transcription, and the foregoing  
22 is a true and correct transcript of the  
23 testimony so given by said witness as aforesaid.

24 I further certify that the signature to

1       the foregoing deposition was not waived by  
2       counsel for the respective parties.

3               I further certify that the taking of this  
4       deposition was pursuant to Notice, and that  
5       there were present at the deposition the  
6       attorneys hereinbefore mentioned.

7               I further certify that I am not counsel  
8       for nor in any way related to the parties to  
9       this suit, nor am I in any way interested in the  
10      outcome thereof.

11               IN TESTIMONY WHEREOF: I have hereunto  
12      set my hand and affixed my notarial seal this

13      10 day of April, 2006.

14

15

16               *Patricia L Wangler*  
17

18               NOTARY PUBLIC, DuPAGE COUNTY, ILLINOIS

19               LIC. NO. 084-002417

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249

1 STATEMENT OF CHANGE OR CORRECTION

2 Page and Line Number 13,13 Ulmenstein→Uhlenstine

3 Reason \_\_\_\_\_

4 Page and Line Number 47,7 gated→mousetrap

5 Reason Trick question

6 Page and Line Number 40,11 gated→mousetrap

7 Reason Trick question; mousetrap is the subject

8 Page and Line Number 49,7 gated→mousetrap

9 Reason Trick question—discussing Allen Bradley 205

10 Page and Line Number 50,3 startled→startle

11 Reason \_\_\_\_\_

12 Page and Line Number 96,20 out with→with out

13 Reason What I'm talking about!

14 Page and Line Number 136,12 gate→mousetrap

15 Reason Properly characterizes my publications.

16 Page and Line Number 130,18 Yes→No

17 Reason See p 159,17

18 Page and Line Number 165,22 pinking→picks

19 Reason Misspoke

20 Page and Line Number 181,3 Insert "not" between

21 Reason That's and much.

22 Page and Line Number 213,13 & 15 plate→gate

23 Reason Plate cannot rest on foot

24

*Ralph L. Barnett* 5/3/06

MCCORKLE COURT REPORTERS, INC.  
CHICAGO, ILLINOIS (312) 263-0052

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3  
4 TINA LINDQUIST, )  
5 Plaintiff, )  
6 vs. ) No. 04-249E  
7 HEIM, L.P., )  
8 Defendants. )

9 This is to certify that I have read the  
10 transcript of my deposition taken in the  
11 above-entitled cause by Patricia L. Wangler,  
12 Certified Shorthand Reporter, on the 6th day of  
13 April 2006, and that the foregoing transcript  
14 accurately states the questions asked and the  
15 answers given by me as they now appear.

16 Ralph L. Barnett

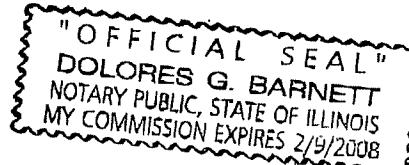
17 RALPH L. BARNETT

18 SUBSCRIBED AND SWORN TO

19 Before me this 4 day

20 of May 2006

21 Dolores G. Barnett  
22 Notary Public



247